

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000046-001 DT

10/29/2003

determines that the administrative law judge and the Arizona State Department of Revenue erred in their construction of A.R.S. Section 22-116. This Court specifically finds that that statute controls the disposition of the funds at issue, and that the Plaintiff, Maricopa County Department of Finance, is entitled to the relief requested in this complaint.

1. Factual Background

The Arizona State Department of Revenue is responsible for the accounting and the return of unclaimed property held by the State of Arizona. The State Department of Revenue is responsible for the administration of the UPA. In this case, the State Department of Revenue audited Maricopa County and determined that the Maricopa County Department of Finance was holding unclaimed property, which the Department of Revenue determined should be administered by the State.

The unclaimed property at issue consisted of appearance bonds that had been exonerated but not collected and restitution funds payable to victims, also uncollected. These funds totaled \$498,287.12, plus interest of \$313, 824.57, for a total of \$812, 111.69.

In an official letter dated August 31, 2001, the Arizona Department of Revenue demanded the above-referenced monies be paid to it as unclaimed property. The Maricopa County Department of Finance appealed this demand and the case was assigned to an administrative law judge. An evidentiary hearing was conducted September 18, 2002, and the administrative law judge issued his decision on November 8, 2002, in favor of the Arizona Department of Revenue. The administrative law judge's decision became final December 26, 2002. This administrative review action was timely filed in the Superior Court.

2. Standard of Review

Pursuant to A.R.S. Section 12-910(e), this Court may review administrative decisions:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing, the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

The scope of review of an agency's determination places the burden upon the Plaintiff to demonstrate that the agency's decision was arbitrary, capricious, or involved an abuse of

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discretion.¹ The reviewing court should not substitute its own discretion for that exercised by an administrative law judge or an agency,² but must only determine if there is any competent evidence to sustain the agency's decision.³ However, in matters of statutory interpretation and conclusions of law, this Court's standard of review is *de novo*.⁴

3. Legal Analysis

Plaintiff, Maricopa County Department of Finance argues that the funds at issue are the property of the Maricopa County General Fund and that A.R.S. Section 22-116 specifically authorizes the County to retain these funds. A.R.S. Section 22-116 provides:

A. On or before April 1 each year, every justice of the peace who has funds in his (or her) possession arising from fees or any other source, which have been in his possession for more than two years before April 1, shall pay such funds to the County Treasurer and shall provide the Treasurer with an itemized list showing the name of the person depositing the money with the justice, the date of the deposit, and the amount.

B. The Treasurer shall deposit the money in an account entitled the "Suspension Account", and at any time within one year from deposit of the funds, the amount owing any person shall be returned and paid to the person upon warrant issued by the board of supervisors. The board of supervisors shall require strict proof that the money should be repaid to the person claiming it, and the warrant, if issued, shall be paid from this suspension fund.

C. One (1) year after deposit of the money with the County Treasurer, all money remaining in the suspension account for which no claim has been filed shall be deposited in the general fund of the County.

The Arizona Department of Revenue contends that the UPA controls. The Arizona Department of Revenue contends that the UPA is not inconsistent with the provisions of A.R.S. Section 21-116, and that property deposited in the general fund of the County for which no claim has been made must still be transferred from the general fund of the County to the Arizona State

¹ Klomp v. Arizona Dept. of Economic Security, 125 Ariz. 556, 611 P.2d 560 (App. 1980); Sundown Imports, Incorporated v. Arizona Dept. of Transportation, 115 Ariz. 428, 565 P.2d 1289 (App. 1977).

² Arizona Dept. of Economic Security v. Lidback, 26 Ariz. App. 143, 546 P.2d 1152 (1976).

³ Schade v. Arizona State Retirement System, 109 Ariz. 396, 510 P.2d 42 (1973); Welsh v. Arizona State Board of Accountancy, 14 Ariz. App. 432, 484 P.2d 201 (1971).

⁴ In re Kyle M., 200 Ariz. 447, 27 P.3d 804 (App. 2001).

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Department of Revenue if such property consists of unclaimed property. Defendant's position is that the provisions of A.R.S. Section 22-116 must be followed by the justice courts with regard to unclaimed funds, and that after the deposit of such unclaimed funds into the general fund of the county, then the unclaimed funds must be transferred to the Arizona State Department of Revenue. This Court rejects that position as untenable and unsupported by the plain meanings of the statutes cited by the parties.

When interpreting statutes, this Court must first and foremost give effect to legislative intent.⁵ This Court is guided by general principals of statutory construction which require that this Court liberally construe a statute so as to give effect to the legislative intent and to promote justice.⁶ Whenever more than one statutory interpretation is possible, the most reasonable interpretation must be adopted by a reviewing court.⁷

This Court finds that the provisions of A.R.S. Section 22-116 are clear and unequivocal. This statute requires that monies held by the justice courts from "fees or any other source" for more than two (2) years must be transferred to the County Treasurer and held in a "suspension account" for one (1) year. At the conclusion of one year, if these monies are not claimed and repaid to the claimant, then the monies shall be deposited in the County general fund. This Court notes that the statute does not provide that once the monies are deposited into the County's general fund, that those monies be transferred to the State. Nor does the statute require that the monies continue to be segregated or held subject to future claims by persons unknown. The time for claiming these monies expires at the end of the time the monies are to be held in the suspension account. The plain meaning of A.R.S. Section 22-116 is that unclaimed monies escheat to the County general fund if not claimed prior to the escheat while in the justice court account or in the suspension account.

This Court accepts and approves Plaintiff, Maricopa County Department of Finances' argument⁸ that A.R.S. Section 44-304 of the UPA acknowledges that the UPA applies "except as otherwise provided in this chapter or by another statute...."⁹ The provisions of A.R.S. Section 22-116 constitute another statute for disposition of unclaimed property. Thus, this Court finds no conflict between the UPA and A.R.S. Section 22-116.

4. Conclusion

For the reasons explained in this opinion, this Court concludes that the provisions of A.R.S. Section 22-116 are clear, unequivocal and not inconsistent with the provisions of the

⁵ Abbott v. City of Tempe, 129 Ariz. 273, 630 P.2d 569 (App. 1981).

⁶ See A.R.S. Section 1-211.

⁷ Abbott v. City of Tempe, supra.

⁸ At page 9 of its opening brief.

⁹ A.R.S. Section 44-304.

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UPA. This Court determines that the administrative law judge and the Arizona Department of Revenue erred as a matter of law in their determinations and legal conclusions in this case.

IT IS THEREFORE ORDERED granting the relief requested by the Plaintiff in this complaint.

IT IS FURTHER ORDERED reversing and vacating the order of the administrative law judge and the Arizona Department of Finance, dated December 26, 2002, in its entirety.

IT IS FURTHER ORDERED that counsel for Plaintiff shall lodge an order and judgment consistent with this opinion no later than December 1, 2003.